

Amendment/Reply

Applicant: Jerald A. Hammann
Serial No.: 09/840,332
Filing Date: April 23, 2001
Docket: H238.101.101
Title: SYSTEM AND METHOD EMPLOYING CAPACITY/DEMAND MANAGEMENT IN HUMAN-FACTOR RESOURCE INDUSTRY

REMARKS

This Amendment/Reply accompanies the Request for Continued Examination (RCE) 37 CFR 1.114 and is in reply to the Final Office Action mailed March 8, 2006. Claims 31-40 were rejected. With this Response, claims 31-40 have been amended. Claims 31-40 remain pending in the application and are presented for reconsideration and allowance.

Claim Rejections under Double Patenting

The Examiner provisionally rejected claims 31, 32, 33, 34, 35, and 36-40 under the judicially created Doctrine of Obviousness-Type Double Patenting as being unpatentable over claims 1, 7, 12, 17, 22, and 66-70 of co-pending Application No. 09/999,378.

M.P.E.P § 804 states:

If a “provisional” nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer.

The present application was filed on April 23, 2001 claiming priority to U.S. Provisional Patent Application 60/198,816, which was filed on April 21, 2000. The co-pending application Serial No. 09/999,378 was filed on October 31, 2001. Since the present application is the earlier filed application of these two pending applications, Applicant respectfully requests that if the below rejections are removed that the provisional double patenting rejection to claims 31-40 based claims 2, 7, 12, 17, 22, and 66-70 of co-pending Application No. 09/999,378 be withdrawn per M.P.E.P § 804 and claims 31-40 be allowed.

Claim Rejections under 35 U.S.C. § 103

The Examiner rejected claims 31-40 under 35 U.S.C. 103(a) as being unpatentable over the Campbell et al. U.S. Patent No. 5,918,209.

Amended independent claims 31-35 all include the limitations of “the measure of an ability to produce and/or make available additional quantities of the at least one composite

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resource over a first date and/or time period beginning at the first date and/or time and ending at a second date and/or time is **related to at least one human factor resource and is not a static ability.**" These limitations of independent claims 31-35 are not taught or suggested by the Campbell et al. patent.

The Campbell et al. patent is directed to "perishable resources" not "human factor resources." In particular, Campbell et al. patent is related to a method and system for determining marginal values for use in conjunction with an airline reservations system for controlling booking of seats (i.e., one example of a perishable resource) on flight leg departures. The Campbell et al. patent, at column 1, lines 28-47, states:

Perishable resources by definition are ones that cannot be inventoried and share three common characteristics: perishability, "fixed" capacity and segmentability. Perishability means that each resource ages or becomes unavailable, and thus has no value, after a certain date, time or similar temporal event. "Fixed" capacity implies a high cost of adding an incremental unit such that capacity is regarded as static and unchanging. Segmentability refers to the ability to segment customers based on a willingness to pay using different rates and/or different purchase restrictions, such as the date of purchase relative to the date of use. Examples of perishable resources include airline seats, hotel room nights, rental car days and similar products or services such as described in L. R. Weatherford & S. E. Bodily, *A Taxonomy and Research Overview of Perishable-Asset Revenue Management: Yield Management, Overbooking, and Pricing*, 40 Operations Research 5, pp. 831-44 (1992), the disclosure of which is incorporated herein by reference.

In the example perishable resource of airline seats, the supply of seats remaining to be booked is calculated from the capacity of the airplane assigned to the flight leg departure minus the seats already booked plus an overbooking factor to account for cancellations and no-shows.

Amended independent claims 31-35 specifically recite that the capacity of the at least one composite resource is a measure of the on-hand supply and/or availability, if applicable, of the at least one composite resource at a first date and/or time plus a measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date and/or time period beginning at the first date and/or time and ending at a second date and/or time, and the measure of an ability to produce and/or make available additional quantities of the

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at least one composite resource over a first date and/or time period beginning at the first date and/or time and ending at a second date and/or time is related to at least one human factor resource and is not a static ability. This is in contrast to the Campbell et al. patent which specifically defines airline seats as a perishable resource and defines **perishable resources as ones that have "fixed" capacity, where the "fixed" capacity implies a high cost of adding an incremental unit such that capacity is regarded as static and unchanging.**

Further, the present specification at page 4, lines 3-26 states:

First, in the human-factor resource industries, capacity is not relatively fixed (per definition element 1), but is highly variable. Resource networks and human-factor resources make decisions on a regular basis which change the available supply of composite resources. Hiring additional human-factor resources, changing the availability parameters of existing resources and human-factor resource decision to change their own availability parameters, sometimes at the last second, in response to demand demonstrate contributory factors to a highly elastic supply. Rather than static and unchanging, the capacity of a particular human-factor resource industry is likely to be highly variable, incorporating such interdependent factors as the time of day, the day of week, the nature of the composite resource and its price curve relative to other similar composite resource, the grouping of reserved demand against the declared capacity and the economic and social trade-offs made by every human-factor resource.

Second, the word perishability (per definition element 3) has a weak meaning in human-factor resource industries. The term perishability only applies in a very limited commercial sense; the human-factor resource has alternative uses for his or her commercial asset. Their asset, time, becomes unavailable for commercial use after a certain date, time or similar temporal event, but may be put to other uses in lieu of its commercial use or may be put to a differing commercial or non-commercial use. For example, a human-factor resource proficient in both women's hairstyling and manicures may perform a haircut, give a manicure, perform other commercial services, other facility-management or administrative tasks, engage in continuing professional education or may devote his or her time to non-professional use.

Applicant also references the present specification at page 5, lines 5-29 which specifically defines distinctions between perishable resource industries and human-factor industries, and states:

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To eliminate ambiguity around the distinction between perishable resource industries and human-factor industries, the following delineating characteristics will suffice: perishable resource industries are industries in which an employed human factor of production, if present, participates in multiple individual transactions simultaneously (i.e., a one-to-many transaction relationship), while an employed human factor of production in human-factor industries participates in individual transactions sequentially (i.e., a one-to-one transaction relationship), where each individual transaction exceeds a sufficient *de minimis* schedule interval, such as approximately 10 minutes or while those employed human factors of production directly interactive with the end user (whether in a one-to-one or a one-to-many relationship) comprise a significant percentage of total costs, such as approximately 15% or greater. Also, as the value of the human-factor resources increases, the applicable *de minimis* schedule interval or percentage of total cost percentage declines.

Moreover, the present specification at page 6, line 29 through page 7, line 3 includes, in example transactions falling outside the human-factor resource industries, perishable resource industry services, such as those rendered by airlines.

Furthermore, the Examiner admits that the Campbell et al. patent does not disclose the limitations of independent claims 31-35 that the communication occurs prior to any first assignment of other concurrently-consumed and/or utilized composite resources to the at least one potential user. The Examiner states that these limitations are well known. Pursuit to M.P.E.P. §2144.03, Applicant respectfully requests that the Examiner cite a reference to teach these limitations admittedly not taught by Campbell et al. patent of the communication (or in claim 34 the indication) occurring prior to any first assignment of other concurrently-consumed and/or utilized composite resources to the at least one potential user, or alternatively, allow independent claims 31-35.

Dependent claim 36 further defines patentably distinct independent claim 31; dependent claim 37 further defines patentably distinct independent claim 32; dependent claim 38 further defines patentably distinct independent claim 33; dependent claim 39 further defines patentably distinct independent claim 34; and dependent claim 40 further defines patentably distinct independent claim 35. Therefore, these dependent claims are also believed to be allowable.

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Therefore, Applicant respectfully requests reconsideration and withdrawal of the 35 U.S.C. § 103 rejection to claims 31-40, and requests allowance of these claims.

CONCLUSION

In view of the above, Applicant respectfully submits that pending claims 31-40 are in form for allowance and are not taught or suggested by the cited references. Therefore, reconsideration and withdrawal of the rejections and allowance of claims 31-40 are respectfully requested.

No fees are required under 37 C.F.R. 1.16(b)(c). However, if such fees are required, the Patent Office is hereby authorized to charge Deposit Account No. 50-0471.

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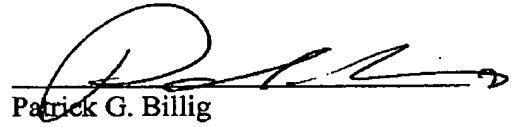
The Examiner is invited to contact the Applicant's representative at the below-listed telephone numbers to facilitate prosecution of this application.

Any inquiry regarding this Amendment and Response should be directed to Patrick G. Billig at Telephone No. (612) 573-2003, Facsimile No. (612) 573-2005. In addition, all correspondence should continue to be directed to the following address:

Dicke, Billig & Czaja
 Fifth Street Towers, Suite 2250
 100 South Fifth Street
 Minneapolis, MN 55402

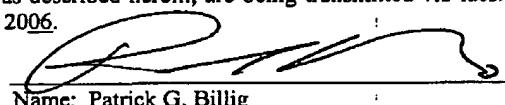
Respectfully submitted,
 Jerald A. Hammann,
 By his attorneys,
 DICKE, BILLIG & CZAJA, PLLC
 Fifth Street Towers, Suite 2250
 100 South Fifth Street
 Minneapolis, MN 55402
 Telephone: (612) 573-2003
 Facsimile: (612) 573-2005

Date: June 8, 2006
 PGB:cmj:mlm


 Patrick G. Billig
 Reg. No. 38,030

CERTIFICATE UNDER 37 C.F.R. 1.8:

The undersigned hereby certifies that this paper or papers, as described herein, are being transmitted via facsimile to Facsimile No. (571) 273-8300 on this 8 day of June, 2006.

By: 
 Name: Patrick G. Billig